

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Wisconsin Central LTD., the Village of Mundelein, the County of Lake, and the State of Illinois, Department of Transportation. :
: :
Stipulated Agreement regarding the installation of an Automated :
Horn System (AHS system) at the crossings of the Company's :
track with public highways known as Butterfield Road, Illinois Rte. :
60 (IL 60), Allanson Road, Hawley Street, Park Street, Maple :
Street (IL. Rte. 176), Dunbar Road, Winchester Road, and : T01-0029
Peterson Road, located in/near the Village of Mundelein, Lake :
County, Illinois, designated as crossings AAR/DOT 689 698N, :
milepost 37.37M; AAR/DOT 689 699V, milepost 37.50M; :
AAR/DOT 689 701U, milepost 38.65M; AAR/DOT 689 703H, :
milepost 39.80M; AAR/DOT 689 704P, milepost 39.94M; :
AAR/DOT 689 705W, milepost 40.10M; AAR/DOT 689 707K, :
milepost 40.85M; AAR/DOT 689 709Y, milepost 41.78M; and :
AAR/DOT 689 710G, milepost 42.38M, respectively. :

SEVENTH SUPPLEMENTAL INTERIM ORDER

By the Commission:

On April 25, 2001, the Illinois Commerce Commission ("Commission") entered its Interim Order in this matter that required, among other things, the Wisconsin Central LTD ("WC") to install an Automated Horn System ("AHS") at nine public highway-rail grade crossings in and near the Village of Mundelein ("Village"), Lake County, Illinois. The installations were required to be completed by August 31, 2001. The cost to install the automated horn system at the seven grade crossings on the local road system was ordered paid 100% by the Grade Crossing Protection Fund ("Fund"), with the two grade crossings on the state system being paid 100% by the Illinois Department of Transportation ("IDOT").

On December 5, 2001, a Supplemental Interim Order was entered by the Commission granting an extension of time to and including December 31, 2001, to the WC within which to complete the automated horn system installation at the nine crossings in the Village of Mundelein. The Supplemental Interim Order further revised the estimates of cost for the installation of the automated horn system, including the cost for the connection to the existing crossing warning devices. The increase in cost for the installation of the AHS and connection was divided between the Fund and IDOT in the same percentage as in the original Interim Order; an

increase to the Fund of \$87,061 and to IDOT in the amount of \$29,833.

On March 27, 2002, the Commission entered its Second Supplemental Interim Order granting an additional extension of time to and including May 31, 2002, within which to complete the work as required by the original Interim Order and Supplemental Interim Order, dated April 25, 2001 and December 5, 2001, respectively. WC stated that it had installed the AHS at the nine crossings, and in early January 2002, began testing of the system in conjunction with the Commission's Rail Safety Section. At the direction of Commission staff, adjustments were required to the microphone placement in the horns. WC needed additional time within which to finish the microphone adjustments and conduct follow-up testing prior to activation of the AHS.

On October 23, 2002, the Commission entered its Third Supplemental Interim Order granting the City an additional six (6) month extension of time to and including April 25, 2003, within which to complete the study as required by the original, Supplemental, and Third Supplemental Interim Orders.

On May 7, 2003, the Commission entered its Fourth Supplemental Interim Order approving additional Fund participation in the project cost. The final cost for the AHS project at the nine crossings increased above the amounts as set forth in the original Order and as amended in the Supplemental Interim Order. The Fourth Supplemental Interim Order required the Fund to pay an additional \$41,000, and IDOT to pay an additional \$1,000.

On May 7, 2003, the Commission entered its Amended Fifth Supplemental Interim Order granting the Village a six (6) month extension of time to allow the Village to explore the options available for long-term maintenance of the automated horn system. The Amended Fifth Supplemental Interim Order further stated that in accordance with the Commission's Interim Order dated April 25, 2001, the Village had complied with all the requirements set forth in said Interim Order. Monthly reports on the operation of the AHS system have been properly and timely filed with the Railroad Safety Section staff ("staff"), quarterly meetings of the parties have been held to discuss operations, and an evaluation study on the effectiveness of the AHS system has been completed by the Northwestern University Center for Public Safety. Upon the completion of the evaluation study, the final report was distributed in January 2003, to the Commission, the Federal Railroad Association ("FRA"), the Volpe National Transportation Systems Center, the Illinois Department of Transportation, and the Villages of Vernon Hills and Libertyville. The study's executive summary states, "the wayside horn significantly reduces highway-rail crossing violations" and, "it accomplishes this task while improving the quality of life for nearby residents." Based upon the results of the study, and the quarterly reports submitted by the Village, Staff is of the opinion that the AHS system has been proven to be an effective and reliable alternative to the need for train crews to sound train horn warnings when approaching public highway-rail grade crossings.

On October 22, 2003, the Commission entered its Sixth Supplemental Order that approved the Maintenance Agreement entered into between Railroad Controls, LTD. and the Village as far as matters contained therein are under the jurisdiction of the Commission concerning the future maintenance of the AHS system. The six (6) month extension of time granted in the Amended Fifth Supplemental Interim Order expired on October 25, 2003. The WC indicated that it would start blowing its train horns on the 25th of October. In Order to preserve the terms of the Stipulated Agreement, and keep the AHS in operation until a decision is made by FRA and the Federal Highway Administration (FHWA), Staff requested and was granted by the Commission a twelve (12) month extension of time within which to keep the AHS operating, the train horns quiet, and allow the FRA and FHWA to complete the rulemaking concerning the establishment of railroad quiet zones.

FRA issued an Interim Final Rule (IFR) for the "Use of Locomotive Horns at Public Highway-Rail Grade Crossings" on December 18, 2003, and indicated the Rule would be final on December 18, 2004. The IFR included a notice that FRA considers the AHS a traffic control device, and use of the AHS as a Supplemental Safety Measure (SSM) would only be considered if FHWA approved the device. On August 2, 2004, FHWA issued an Interim Approval for use of the AHS at highway-rail grade crossings. The FHWA Interim Approval was based on the FRA IFR.

The Sixth Supplemental Order gave the City and the WC an extension of time, to and including October 22, 2004, to request a hearing on the future of the automated horn system ("AHS") as a railroad crossing warning device at the nine grade crossings in and near the Village of Mundelein, Lake County. On September 13, 2004, the City filed its Supplemental Petition with the Commission again requesting a hearing in order to determine the future of the AHS, and directing that they remain in place permanently. However, since the federal train horn rule won't be issued in its final form until at least December 18, 2004, staff recommends a hearing not be held at this time. Rather, staff recommends continued use of the AHS, to and including October 22, 2005, be granted to the City and WC. Staff also recommends, upon release of the FRA Final Rule for the "Use of Locomotive Horns at Public Highway-Rail Grade Crossings" and Final Approval by the FHWA for the use of the AHS, a hearing be held to determine the future of the AHS at the nine Mundelein locations.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- 2) The prefatory portion of this Sixth Supplemental Interim Order is true and correct and is hereby adopted as findings of fact;

- 3) Staff recommends an extension of time to and including October 22, 2005, or until such time that the FRA issues a Final Rule for the "Use of Locomotive Horns at Public Highway-Rail Grade Crossings" and FHWA issues a Final Approval for use of the Automated Horn System (AHS) as a traffic control device, be granted to the parties; upon the release of the FRA Final Rule and the FHWA Final Approval, a hearing will be scheduled to determine the future of the AHS at the nine highway-rail grade crossing located in and near Mundelein;
- 4) All other terms and conditions of the original Interim Order, Supplemental Interim Order, Second Supplemental Interim Order, Third Supplemental Interim Order, Fourth Supplemental Interim Order, and Amended Fifth Supplemental Interim Order, dated April 25, 2001, December 5, 2001, March 27, 2002, October 23, 2002, May 7, 2003, and May 7, 2003, respectively, shall remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time to and including October 22, 2005, or until such time as the Federal Railroad Administration releases its Final Rule for the "Use of Locomotive Horns at Public Highway-Rail Grade Crossings" and the Federal Highway Administration releases its Final Approval for use of the Automated Horn System as a traffic control device, be, and it is hereby, granted to the Village of Mundelein and the Wisconsin Central Railway Company to continue with the operation of the Automated Horn System under the terms of the Stipulated Agreement and previous Commission Interim Orders.

IT IS FURTHER ORDERED that upon the release of the Final Rule for the "Use of Locomotive Horns at Public Highway-Rail Grade Crossings" by the Federal Railroad Administration and Final Approval by the Federal Highway Administration for use of the Automated Horn System, a hearing shall be scheduled to take testimony on the future of the Automated Horn System at the nine highway-rail grade crossings located in and near the Village of Mundelein.

IT IS FURTHER ORDERED that the Village shall continue to monitor the AHS installations and submit monthly reports to the Director of Processing and Information of the Commission's Transportation Division.

IT IS FURTHER ORDERED that any person or party making a Request For Extension Of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that Requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extensions of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that all other terms and conditions of the original Interim Order, Supplemental Interim Order, Second Supplemental Interim Order, Third Supplemental Interim Order, Fourth Supplemental Interim Order, Amended Fifth Supplemental Interim Order, and Sixth Supplemental Interim Order, dated April 25, 2001, December 5, 2001, March 27, 2002, October 23, 2002, May 7, 2003, May 7, 2003, and October 22, 2003, respectively, are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that, subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 28th day of October, 2004.

JUDGE <i>MEB</i>
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR

Edward C. Husley ₂

Chairman